



Criminal Record Checking Policy and Procedure

Appendix 3

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This document will be distributed to all employees of Cherwell District

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REVISION HISTORY

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1. Introduction

This policy applies to all eligible employees (including agency/locum worker, casual workers, apprentices, volunteers, student placements where eligible), who are working in regulated activity or those identified in the Rehabilitation of Offenders (Exemption) Order.

The aim of this policy is to provide a fair and consistent framework for checking criminal record information, ensuring those responsible for recruitment and management understand their responsibilities, the activities and jobs that are eligible for DBS checks and the information they can legally ask applicants to disclose.

This policy also ensures those subject to criminal record checking understand the information they are required to provide and how the information will be handled.

The council requires criminal record checks for people applying to work or volunteer in certain work settings or for certain types of jobs, such as to work with children, young people and vulnerable adults.

Checking criminal records is one of a range of measures that help the council make safe recruitment decisions and protect those using its services, the public and public funds from the risk of criminal activity and abuse.

Individuals are informed when applying for work or volunteering with the council, what information they are required to disclose about criminal convictions and whether the role is eligible for criminal record checks.

Applications for Criminal Record Certificates (DBS checks) are processed via the Human Resources Department at Cherwell District Council, as the registered body and are handled in accordance with the [DBS code of practice](#). Criminal Record Certificates will be referred to as DBS checks throughout this policy.

The council will only ask applicants for criminal record information and apply for DBS checking that is permissible by law for the role.

The council undertakes not to unfairly discriminate against anyone who is subject to a criminal record check on the basis of a conviction or other information revealed.

Having a criminal record will not normally automatically bar an individual from working for the council. The facts will be carefully considered, and the council will discuss the offences disclosed with the individual and assess the risks before making a decision. **Appendix 1** provides categories of offences that may lead to refusal to appoint.

Any information revealed as part of criminal record checking, will be dealt with in accordance with the Data Protection Act 2018 and any other provisions.

2. Types of worker and requirement for DBS checking

DBS checks are required for anyone applying to carry out certain jobs or activities regardless of whether they are applying for:

- Permanent, temporary or casual employment
- Volunteering
- An assignment as an agency/locum worker

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- An apprenticeship
- A student placement

Contractors

Where the council enters into contracts with external organisations which employ staff for the provision of services on the council's behalf, it will ensure that the contractor's employment systems comply with this policy.

Agency Workers

For agency workers it is the responsibility of the employing agency to ensure that appropriate criminal record checking is carried out to comply with this policy. A DBS check must have been processed within 12 months of the start date of the temporary agency assignment. If during the duration of the booking the DBS certificate date looks likely to exceed 12 months, a new application (or DBS Update Service check) must be processed by the employing agency. Council managers are responsible for verifying with the employing agency that satisfactory checks have been carried out and for examining the original of the Criminal Record certificate before an agency worker starts work.

Students on placement

70 or 100 day placements: Students on placement with the council, carrying out work eligible for criminal record checks, are subject to the same criminal record checking requirements as other workers. A fresh DBS check is required before the placement starts. This requirement can be satisfied via the DBS Update Service, if the certificate held is for the appropriate level of check and is for the same workforce e.g. adults or children's.

Short term observational placements: Where students join the council on short term observational placements of up to 5 days, where they will be supervised at all times, the council will accept the DBS check carried out by the university accompanied by a declaration from the student that their criminal record status has not changed. The line manager must check the DBS certificate before the placement starts.

Where criminal offences are disclosed for students, their placement offer will be subject to a risk assessment and approval from the Assistant Director of Human Resources.

3. Rehabilitation of Offenders Act 1974

All applicants for work with the council are required to disclose, as part of their application, details of any unspent criminal convictions or cautions, and when applying for certain eligible roles, details of convictions or cautions that are classed as 'spent' under the Rehabilitation of Offenders Act 1974.

Spent convictions

The [Rehabilitation of Offenders Act 1974 \(ROA\)](#) allows most convictions and all cautions to be considered 'spent' after a specified 'rehabilitation' period.

Once a caution or conviction is spent, the ROA treats a rehabilitated person as if they had never committed or been convicted for the offence. The individual has the right not to disclose information about the spent conviction when applying for jobs, unless they are applying for a job or to undertake activities that are listed under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. See **Appendix 2**.

Convictions never become spent if they involve either a custodial sentence of over four years or a public protection sentence imposed for specified sexual and violent offence.

Failure to disclose information

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Failure by applicants to disclose information about criminal convictions, where required, is likely to result in an offer of employment being withdrawn or disciplinary action being taken for existing council employees, which may result in dismissal. Other legal action may be taken if appropriate.

If applicants have any concerns about what to disclose then they are advised to seek their own independent legal advice. The charity [NACRO](#) provides support and advice to ex-offenders and employers.

Professions, occupations and activities eligible for DBS Checks

The council will ensure that it only requests DBS checks for roles that it is legally entitled to and will ensure the level of Criminal Record check requested is relevant to the type of work being undertaken.

4. Levels of DBS checks

Basic Checks - these checks provide details of unspent convictions only. This Basic Check, in accordance with the government's [Baseline Personnel Security Standard](#) (BPSS), is required for council roles that have access to the Public Service Network (PSN).

Standard checks – these checks provide information about spent and unspent convictions. To be eligible for a standard level DBS check, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. See **Appendix 2** for common council occupations and professions listed in the Exceptions Order and that are eligible for Standard Checks.

Enhanced checks – this includes the same information as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for. To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order **and** the Police Act 1997 (Criminal Records) regulations. See **Appendix 3** for examples of occupations and professions eligible for enhanced DBS checks.

Enhanced checks with Children's and/or Adults' Barred List check(s) - This is like the enhanced check but includes a check against the Children's and/or Adults' [Barred Lists](#) for certain roles that involve what is termed '*regulated activity*'. These are lists of individuals identified as unsuitable for working with children and/or vulnerable adults.

To be eligible to request a check against the Children's or Adults' Barred Lists, the position must be eligible for an Enhanced DBS check and be specifically included in the Police Act 1997 (Criminal Records) regulations.

Appendix 4 provides a typical list of activities and roles that are defined as "regulated" under the Act.

The Disclosure and Barring Service online tool can also be used to check if a role is eligible for a DBS check. <https://www.gov.uk/find-out-dbs-checkht>

It is unlawful to request a Barred List check on individuals who are not going to be engaged in regulated activity.

Criminal offences not disclosed by the Disclosure and Barring Service

The DBS remove certain old and minor offences from Criminal Record certificates in line with legislation introduced in May 2013. This is referred to as 'filtering'. Guidance about

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offences that are filtered from Criminal Record certificates can be found here [DBS filtering guidance - GOV.UK.](#)

5. Requesting a DBS check

Before initiating a criminal record check, recruiting managers must satisfy themselves that the position is eligible for a check under this policy and current legal provisions and establish the relevant level of check that can be requested.

Recruiting managers must verify the applicant's identity before initiating the DBS check by examining and taking copies of certain documents - see [DBS ID checking guidelines.](#)

6. DBS Update Service

Wherever possible and with an applicant's consent, the council will use the [DBS Update Service](#) to check applicants' criminal record status, including for external applicants, if the certificate is for the same workforce e.g. children's or adults, and is the correct level for the role e.g. standard, enhanced or enhanced with barred list check.

7. Portability of Criminal Record Certificates and rechecking of existing council workers and volunteers

Existing council staff (including casual workers) changing jobs/roles

If an employee or casual worker, does not have a Criminal Record Certificate and moves to an eligible role, they cannot start in the post until a satisfactory check has been received, unless certain criteria are met and the relevant Assistant Director gives approval (see Receiving results of DBS checks below).

Where council staff move to jobs that require a Criminal Record check, and they already hold a Criminal Record certificate, this will be accepted provided that:

- a) it covers the same workforce e.g. adults or children's and the relevant barred list check (where this is required) and;
- b) the employee has been continuously employed with the council, with a gap of no more than three months, for the period since the certificate was issued, and;
- c) the certificate is not due for re-checking under council's policy, and;
- d) the employee can provide the original certificate to the Recruiting Manager for examination and;
- e) where convictions are disclosed, a risk assessment is carried out and approval has been given by the Assistant Director to proceed with the appointment.

Portability for casual workers and volunteers

Where casual workers or volunteers have a break in periods of work or volunteering, of three months or more, a re-check of their criminal record status is required either via the DBS Update Service (if registered) or by undertaking a fresh DBS check.

Casual workers and volunteers will be subject to a DBS check if they are offered temporary or permanent employment in an eligible role. Where they hold a DBS Certificate, this may be accepted if all the criteria set out in paragraph 35 is met.

At the point of applying for a DBS check, casual workers and volunteers will be encouraged to register with the DBS Update Service. This allows portability of their DBS

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certificate and future criminal record status checks to be carried out where, for example, they have gaps in work or move to different roles in the council. There is a small annual fee to register with the Update Service but is free for volunteers.

8. Re-checking

Employees working in regulated activity with children are subject to a DBS check every three years. This includes all staff that require an enhanced check plus children's barred list check. Drivers who are responsible for transporting children (including taxi and coach drivers) will also be subject to a DBS recheck. (See Annex 4 on regulated activity).

Managers have the discretion to request a recheck at any time if they have cause for concern about an employee's criminal record status.

All employees are responsible for notifying their manager immediately if their criminal record status changes, including driving offences. Employees in roles eligible for DBS checks, including volunteers, that are not working in regulated activity with children will not be subject to DBS rechecking but will be asked annually by their manager to confirm their criminal record status is unchanged.

9. Receiving results of DBS checks

Criminal Record certificates are issued directly to the individual, who must then show an original of the certificate to a member of the Human Resources Team.

These certificates will include information about any criminal convictions and cautions part from those minor and old offences that are 'filtered' - see 'Enhanced Checks'.

Where criminal offence information is disclosed, the Line Manager will meet with the employee or applicant to gather information about the conviction, carry out a risk assessment and seek approval from their Deputy Director to proceed with the appointment or employment if this is appropriate. See guidance on carrying out a risk assessment. Approved risk assessment forms must be uploaded on the employee electronic personnel file (EPF) where appropriate.

10. Requirement for employees and volunteers to inform the council of potential or actual criminal involvement

Employees and volunteers of the council are required to notify their manager immediately if they are under investigation, charged, convicted, cautioned, reprimanded or warned in relation to any criminal offence. This will be investigated and may result in formal action. Where an individual fails to notify their manager, this will be treated as a disciplinary offence and may result in dismissal. There may be separate requirements imposed on the employee or volunteer to notify a regulatory or professional body as well. This requirement is not covered in this policy

11. Criminal cases pending at the time of application for employment or volunteering

Where an applicant is under investigation, charged, convicted, cautioned, reprimanded or warned in relation to any criminal offence or has criminal proceedings pending at the time an application for a job is made, full consideration will be given to the individual case before deciding on any offer of employment. Failure to disclose any pending investigation may result in disciplinary action.

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Starting work before a DBS check has been received

Where appointments are subject to a satisfactory DBS check, (including for internal candidates), individuals will not normally be able to start work until this is in place.

In exceptional circumstances, where there are critical service needs, permission may be given by the relevant Deputy Director for an appointee to start work only if:

all other pre-employment checks are in place and,
a risk assessment is undertaken and establishes that there is low risk and,
for all persons working in schools, a children's barred list has been carried out.

Important: Under no circumstances can appointees start work in residential settings or in one to one or unsupervised situations, until a satisfactory, up to date DBS check has been received.

12. Confidentiality and records

The council complies fully with its obligations under the Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information.

In accordance with section 124 of the Police Act 1997, certificate information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom certificates or certificate information has been revealed but do not pass this information to anyone who is not entitled to receive it.

Once a recruitment (or other relevant) decision has been made, the council do not keep photocopies of Criminal Record certificates for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. The Criminal Record Check serial number and date of issue from the Criminal Record certificates will be retained within Human Resources.

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Appendix 1

Categories of offences which may lead to refusal to appoint or require a risk assessment before an appointment decision can be made.

For advice contact the HR department on humanresources@cherwell-dc.gov.uk.
Guidance on carrying out a risk assessment can be found [here](#).

Working with children, young people and vulnerable adults

Sexual offences- convictions for these offences will normally disqualify applicants:
Any sexual offence involving a child or a vulnerable adult.
Any sexual offence involving violence or the misuse of drugs
Any sexual offence involving organising sexual activity.
An assessment of risk will be undertaken when considering applicants with convictions:
Where the applicant was convicted of sex with an under-age person when they themselves were of a similar age.
Other sexual offences.
Violent offences - convictions for the following offences will normally disqualify applicants:
Any violent offence against a child or vulnerable adult.
Murder, manslaughter, grievous bodily harm, aggravated bodily harm.
Violent sexual offences.
Domestic violence
An assessment of risk will be undertaken when considering applicants with convictions for the following:
Actual bodily harm, wounding, assault and battery
Possessing an offensive weapon.
Death by reckless or dangerous driving.
Any other violent offences

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Offences relating to alcohol and drugs - convictions for the following offences will normally disqualify applicants:
Any offence relating to dealing, cultivating or supplying controlled drugs or substances.
An assessment of risk will be undertaken when considering applicants with convictions for:
Possession of a class A, B or C drugs.
Offences involving supplying alcohol to young people and children.
Repeated offences involving alcohol.
Being drunk or under the influence of drugs in charge of a motor vehicle. This will be a serious matter where jobs involve driving or transporting others.
Other offences involving alcohol or drugs.
Offences involving theft and dishonesty- convictions for the following offences will normally disqualify applicants:
Any offence involving theft or dishonesty with a child or vulnerable adult.
Any offence involving theft or dishonesty, including benefit fraud, and associated violence.
Burglary, aggravated burglary, robbery, blackmail, going equipped to commit burglary.
Other convictions involving dishonesty will be subject to a risk assessment.
Offences relating to misuse of the intranet or records
Convictions for misuse of the internet or records, involving child or other illegal pornography, using records for purposes of abusing others or involving violence or racism or similar will normally disqualify an applicant for appointment.
Conviction for the misuse of information.
Other relevant matters which relate to children and young people - the following will normally disqualify an applicant from appointment:
Any offence against children, young people or other vulnerable adults.
An assessment of risk will be undertaken for applicants declaring:
That they have had a child taken into care, placed under a safety order for reasons relating to abuse or neglect.
They have been dismissed from employment due to misconduct.

For employment and volunteering not involving working with children or vulnerable adults only unspent convictions can be taken into account.

Appendix 2

Examples of the professions, offices and employment listed under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

This is not a comprehensive list but gives an indication of the types of council employment included in the Exceptions Order.

1. Any employment by a local authority in connection with the provision of social services or by any other body in connection with the provision by it of similar services, being employment which is of such a kind as to enable the holder to have access to any of the following classes of person in the course of their normal duties:
 - Persons under the age of 18 or over the age of 65;
 - Persons suffering from serious illness or mental disorder of any description;
 - Persons addicted to alcohol or drugs;
 - Persons with sensory impairments;
 - Other persons who are substantially and permanently disabled.
2. Any employment by a youth club, local authority or other body which is concerned with the promotion of leisure or recreational activities for persons under the age of 18, being employment which is of such a kind as to enable the post holder to have access to such persons in the course of their normal duties.
3. Any employment or other work which is carried out for the purposes of an adoption service, an adoption support agency a voluntary adoptions agency, a fostering service or a fostering agency and which is of such a kind as to enable a person, in the course of his normal duties, to have contact with children or access to sensitive or personal information about children.
4. Any employment or office which is concerned with the management of a childminder agency or any work for a childminder agency which is of such a kind as to require the person engaged in that work to enter day care premises or premises on which child minding is provided as to enable the person, in the course of their normal duties, to have contact with children for who child minding or day care is provided or access to sensitive or personal information about children for whom childminding or day care is provided.
5. Employment in healthcare professions (including medical practitioners, dentists, nurses, midwives, optometrists, registered pharmacists and osteopaths).
6. Employment in the legal profession (including barristers, solicitors).

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Eligibility criteria for requiring Enhanced Criminal Record certificates

To be eligible for an Enhanced Criminal Record Certificate the activity must be listed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) regulations (as amended).

Examples include:

- Positions which involve regularly caring for, training, supervising or being solely in charge of, persons aged under 18;
- Positions which involve regularly caring for, training, supervising or being solely in charge of a person aged 18 or over who is a vulnerable adult in accordance with the Police Act 1997 (as amended).
- Registration for child minding or providing day care.
- Social Workers.
- Positions responsible for placing children with foster parents in accordance with any provision of, or made by virtue of, the Children Act 1989 or the Children (Northern Ireland) Order 1995 or the exercise of any duty under or by virtue of, section 68 of that Act or article 108 of that Order (welfare of privately fostered children);
- A decision made by an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 (b) as to a person's suitability to adopt a child;
- Positions in a school within the meaning of section 4 of the Education Act 1996).

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Appendix 4

Regulated activity in relation to children and vulnerable adults

To be eligible to request a check against the **Children's or Adults' Barred Lists**, the position must be eligible for an Enhanced DBS check and be specifically included in the Police Act 1997 (Criminal Records) regulations as "*regulated activity*".

Regulated activity is work that a barred person must not do.

The table below summarises "Regulated Activity" in relation to Children. For exceptions and more detailed information read the Department of Education's documents [Keeping Children Safe in Education](#).

An activity is regulated activity in relation to **children** if carried out:

In one of the following establishments;

- Frequently (once a week or more often), or on 4 or more days in a 30-day period;
- By the same person, engaged in work for or in connection with the purposes of the establishment; and
- It gives the person the opportunity, in their work, to have contact with children.

Activities	Establishment
<ul style="list-style-type: none">• Teaching• Training• Instructing• Caring• Provision of Personal Care• All forms of Health Care relating to physical or mental health• Supervision of children• Provision of advice/guidance on well-being• Driving a vehicle only for children• Provision of treatment or therapy• An Office Holder, e.g. Governor; Commissioner of Services; Contract Monitoring; Councillor• Providing occasional or temporary services	Schools/Academies Pupil Referral units Nursery Schools Institutions for the detention of children Childrens Homes Childrens Centres Childcare premises Childrens Library

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<ul style="list-style-type: none">• Activities that allow contact with children (includes volunteers) with supervision at a reasonable level• Providing legal advice• Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (one a week or more often), or on 4 or more days in a 30-day period where the person has access to the content of the matter, or contact with users.	
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Day to day management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

The table below summarises "Regulated Activity" in relation to **vulnerable Adults**. For exceptions and more detailed information read the Department of Health's document "[Regulated activity \(adults\)](#)".

There are six categories within the new definition of regulated activity.

Providing Health Care

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity.

- a. A health care professional is a person who is regulated by any of the following professional regulators:
 - General Medical Council
 - General Dental Council
 - General Optical Council
 - General Osteopathic Council
 - General Chiropractic Council
 - General Pharmaceutical Council
 - Pharmaceutical Society of Northern Ireland
 - Nursing and Midwifery Council
 - Health Professions Council
- b. Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care

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professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded.

First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.

Providing Personal Care

Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.

Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.

Anyone who trains, instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.

There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services and providing ongoing support to clients.

Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- a. managing the person's cash,
- b. paying the person's bills, or
- c. shopping on their behalf.

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Assistance in the conduct of a person's own affairs

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005
- Enduring power of attorney within the meaning of the Mental Capacity Act 2005
- Being appointed as the adult's deputy under the Mental Capacity Act 2005
- Being an Independent Mental Health Advocate
- Being an Independent Mental Capacity Advocate
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006
- Receiving payments on behalf of that person under the Social Security Administration Act 1992
- is in regulated activity.

Conveying

1. Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying on behalf of an organisation and for the purpose of enabling the adult to receive services. The meaning of health care, relevant personal care and relevant social work are discussed above.
2. In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.
3. Conveying does not include licensed taxi drivers or licensed private hire drivers and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

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